

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SHIRLEY L. PHELPS-ROPER,)	
)	
Plaintiff,)	
)	
v.)	No. 4:09-cv-1296-JCH
)	
CITY OF BERKELEY, MISSOURI,)	
)	
Defendant.)	

Plaintiff's Statement of Uncontroverted Material Facts

Pursuant to E.D.Mo. L.R. 4.01(E), the following are uncontroverted material facts in support of her motion for partial summary judgment:

1. Shirley Phelps-Roper (hereinafter "Plaintiff") is a member of Westboro Baptist Church (hereinafter WBC), which follows Primitive Baptist and Calvinist doctrines. Based on these doctrines, Plaintiff and other church members believe that acceptance by society of the sin of homosexuality and other grave sin prompts divine judgment. They further believe that God is punishing America for the sin of homosexuality and other grave sin by killing Americans. Doc. # 3, Ex. A at ¶ 3.

2. Along with other members of WBC, Plaintiff has long expressed her sincerely held religious beliefs by engaging in picketing and protesting. For many years, they have picketed and protested near funerals of gay persons, persons who died from AIDS, persons whose lifestyles they believed to be sinful but are touted as heroic upon their death, and persons whose actions while alive had supported homosexuality and other activities they consider sinful. The purpose of picketing and protesting near funerals is to use an available public platform to publicize the church's religious message. The

funerals of American soldiers are an international platform where the question of whether God is cursing or blessing America is being discussed. Plaintiff believes that this public platform is the only place where her religious message can be delivered in a timely and relevant manner to those attending the funeral and to those participating in the public events and displays outside the funeral. Also Plaintiff pickets near funeral-related events to voice dissent from the prevailing public messages made at such events. *Id.*

3. All of Plaintiff's pickets and protests are peaceful and conducted on public streets and sidewalks. *Id.*

4. City of Berkeley, Missouri (hereinafter "Defendant"), is a municipality and political subdivision of the State of Missouri.

5. In response to pickets and protests conducted by Plaintiff and members of her church with a similar viewpoint and to prevent such speech within Defendant's boundaries, Defendant enacted ordinance that is codified as § 210.300 of the Defendant's Code of Ordinances. Section 210.300 reads as follows:

SECTION 210.300:

FUNERAL PROTESTS PROHIBITED, WHEN -- FUNERAL DEFINED

A. It shall be unlawful for any person to engage in picketing or other protest activities within three hundred (300) feet of or about any location at which a funeral is held within one (1) hour prior to the commencement of any funeral and until one (1) hour following the cessation of any funeral. Each day on which a violation occurs shall constitute a separate offense.

B. For the purposes of this Section, "funeral" means the ceremonies,

processions and memorial services held in connection with the burial or cremation of the dead.

6. A violation of § 210.300 “shall be punished by a fine of not less than five dollars (\$5.00) and not more than one thousand dollars (\$1,000.00) or by imprisonment for a period not to exceed three (3) months, or by both such fine and imprisonment.” §100.070 City of Berkeley Code of Ordinances.

7. As a result of Defendant's ordinance, Plaintiff and other members of her church are chilled from exercising their First Amendment rights in the City of Berkeley. Plaintiff would conduct protests by picketing at funerals within the City of Berkeley but for her fear of being arrested for constitutionally protected speech because of § 210.300. Doc. # 3, Ex. A at ¶ 4.

Respectfully submitted,

/s/ Anthony E. Rothert
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served upon each of the Defendants listed below at the address listed below by placing a copy of the foregoing in a properly addressed, postage pre-paid envelope and placing said envelope in the United States Mail on September 3, 2009:

Octavia Pittman
City Clerk
City of Berkeley
6140 N. Hanley
Berkeley, MO 63134

/s/ Anthony E. Rothert